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U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PELAGIA FLORENCE)	No. 04-73319
THEVANAYAGAM,)	
)	Agency No. A73-371-634
Petitioner,)	
)	MEMORANDUM*
v.)	
)	
MICHAEL B. MUKASEY,**)	
Attorney General,)	
)	
Respondent.)	
_____)	

Petition to Review an Order of the
Board of Immigration Appeals

Submitted November 7, 2007***
San Francisco, California

Before: NOONAN, FERNANDEZ and McKEOWN, Circuit Judges.

Pelagia Florence Thevanayagam, a native and citizen of Sri Lanka, petitions

*This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

**Michael B. Mukasey is substituted for his predecessor, Alberto R.
Gonzales, as Attorney General of the United States. Fed. R. App. P. 43(c)(2).

***The panel unanimously finds this case suitable for decision without oral
argument. Fed. R. App. P. 34(a)(2).

for review of the Board of Immigration Appeals' denial of her application for asylum, withholding of removal, and relief under the Convention Against Torture.¹ We deny the petition.

The BIA's determination that an alien is not eligible for asylum must be upheld if "supported by reasonable, substantial, and probative evidence on the record considered as a whole." INS v. Elias-Zacarias, 502 U.S. 478, 481, 112 S. Ct. 812, 815, 117 L. Ed. 2d 38 (1992). "It can be reversed only if the evidence presented . . . was such that a reasonable factfinder would have to conclude that the requisite fear of persecution existed." Id. When an alien seeks to overturn the BIA's adverse determination, "he must show that the evidence he presented was so compelling that no reasonable factfinder could fail to find the requisite fear of persecution." Id. at 483–84, 112 S. Ct. at 817; see also Ghaly v. INS, 58 F.3d 1425, 1429 (9th Cir. 1995). When an asylum claim is made, an alien must show either past persecution or a well-founded fear of future persecution that is both "subjectively genuine and objectively reasonable." Fisher v. INS, 79 F.3d 955, 960 (9th Cir. 1996) (en banc); see also Gu v. Gonzales, 454 F.3d 1014, 1019 (9th

¹United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85. The Convention Against Torture is implemented at 8 C.F.R. § 208.18.

Cir. 2006).

Thevanayagam's asylum claim fails because she did not present evidence so compelling that a reasonable factfinder had to decide in her favor.² Although the evidence did show some degree of unpleasantness and harassment, it did not compel a conclusion that she was persecuted. See Gu, 454 F.3d at 1019 (“Persecution is an ‘extreme concept’”); Korablina v. INS, 158 F.3d 1038, 1044 (9th Cir. 1998) (same); see also Nahrvani v. Gonzales, 399 F.3d 1148, 1153–54 (9th Cir. 2005) (noting harassment alone is not persecution); Hoxha v. Ashcroft, 319 F.3d 1179, 1182 (9th Cir. 2003) (same). Nor did the evidence compel a conclusion that she has a well-founded fear that she will be persecuted in the future.³

Finally, this record does not compel a determination that it is more likely than not that Thevanayagam will be tortured in Sri Lanka. See Malhi v. INS, 336 F.3d 989, 993 (9th Cir. 2003); Kamalthas v. INS, 251 F.3d 1279, 1283 (9th Cir. 2001); see also Nuru v. Gonzales, 404 F.3d 1207, 1224 (9th Cir. 2005) (“torture is

²We do not consider the alternate determination that she was not credible because the result would be the same whether she was credible or not.

³Because Thevanayagam did not meet the eligibility requirements for asylum, she was not entitled to withholding of removal either. See Gomes v. Gonzales, 429 F.3d 1264, 1266 (9th Cir. 2005); Ghaly, 58 F.3d at 1429.

more severe than persecution”). Thus, the Convention Against Torture provides her no relief.

Petition DENIED.